

1. NOTICE OF PROPOSED ACTION

OFFICE OF ADMINISTRATIVE LAW

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Sacramento, CA 95814
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WILLIAM L. GAUSEWITZ
Director

**NOTICE OF PROPOSED RULEMAKING****TITLE 1, CALIFORNIA CODE OF REGULATIONS
ADOPT SECTIONS 50, 52 AND 54, AND AMEND SECTION 55,
REGARDING EMERGENCY REGULATIONS****NATURE OF PROCEEDING**

NOTICE IS HEREBY GIVEN that the Office of Administrative Law (OAL) is proposing to take the action described in the Informative Digest.

A public hearing regarding this proposal will be held on April 3, 2007, at 10:00 a.m. in Room 112 of the State Capitol, Sacramento, California 95814.

Following the public hearing the Office of Administrative Law may thereafter adopt the proposals substantially as described below or may modify the proposals if the modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written comments related to this proposal, or who provide oral testimony if a public hearing is held, or who have requested notification of any changes to the proposal.

Notice is also given that any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the

Office of Administrative Law
300 Capitol Mall, Suite 1250
Sacramento CA, 95814.

Comments may also be submitted by facsimile (FAX) at (916) 323-6826 or by e-mail to staff@oal.ca.gov. Comments must be submitted prior to 5:00 p.m. on April 3, 2007.

AUTHORITY AND REFERENCE

Pursuant to the authority vested by Sections 11342.4 and 11349.1 of the Government Code, and to implement, interpret or make specific sections 11342.545, 11346.1, 11349.1, 11349.3, and 11349.6 of the Government Code, the Office of Administrative Law is considering changes to Division 1 of Title 1 of the California Code of Regulations as follows: Adoption of sections 50, 52, and 54 and amendment of section 55.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

In 2006 the Legislature passed and the Governor signed AB 1302 (Jerome Horton), a bill that, among other things, amended sections 11346.1 and 11349.6 of the Government Code – the law governing how state agencies adopt emergency regulations. The changes in law enacted by AB 1302 took effect on January 1, 2007. AB 1302 contains an uncodified section providing that the changes it enacts regarding emergency regulations apply only to emergency regulations initially submitted to OAL on or after 1/1/07.

AB 1302 requires an agency adopting emergency regulations to provide five working days advance public notice of the adoption (Government Code § 11346.1(a)(2)). It also mandates that OAL wait five calendar days from receiving an emergency prior to taking action on it in order to permit public comment on the proposal (Government Code § 11349.6(b)). Advance public notice is not required when “the emergency situation clearly poses such an immediate serious harm that delaying action to allow public comment would be inconsistent with the public interest.”

The statute, however, provides no definition or guidance as to what circumstances do and what do not satisfy this “immediate, serious harm” standard. The proposed regulation clarifies this statute by requiring an agency submitting emergency regulations to OAL without providing prior public notice to demonstrate that a delay of 12 days will cause substantial harm and that the proposed regulation can be reasonably expected to prevent or alleviate that harm.

AB 1302 changed the initial effective period for emergency regulations and modified the law governing readoption of emergency regulations. Emergency regulations initially submitted to OAL prior to 1/1/07 are effective for 120 days. They may be readopted with OAL’s approval for additional periods of 120 days. There is no statutory limit to the number of times an emergency regulation may be readopted. There are no statutory standards guiding OAL’s decision as to whether a request to readopt should be granted or denied. Under AB 1302, emergency regulations are initially effective for 180 days. OAL may approve not more than two readoptions of an emergency regulation, each for a period of 90 days. AB 1302 also established a standard for when an emergency regulation should be readopted by providing that readoption is permissible only when “the agency has made substantial progress and proceeded with diligence” to adopt the emergency regulations on a permanent basis.

The proposed regulations clarify an ambiguity in the AB 1302 scheme. They provide that the 5-day advance public notice of the adoption required by section 11346.1(a)(2) of the Government Code is not required for readoption of an emergency regulation.

AB 1302 imposes a new requirement in justifying the use of the emergency regulation process. It provides that when “the situation identified in the finding of emergency existed and was known by the agency adopting the emergency regulation in sufficient time to have been addressed through nonemergency regulations . . . the finding of emergency shall include facts

explaining the failure to address the situation through nonemergency regulations.” The proposed regulation clarifies this statute by specifying that this explanatory statement is required whenever the situation identified in a finding of emergency existed and was known to the rulemaking agency 270 days or more prior to the submission of the emergency regulation to OAL. The period of 270 days, approximately 9 months, was selected based upon OAL’s experience under the pre-AB 1302 law that the large majority of emergency regulations are adopted as permanent regulations in 240 days or less.

Finally, the proposed regulations make conforming changes to title 1, Cal. Code Regs. section 55, to accommodate statutory changes enacted by AB 1302. Section 55 is the current regulation governing OAL review of public comments on emergency regulations. Under prior law, OAL review of public comments was functionally permissive rather than mandatory. Under AB 1302 OAL is mandated to review public comments “except when the emergency situation addressed by the regulations clearly poses such an immediate, serious harm that delaying action to allow public comment would be inconsistent with the public interest.” The proposed regulations modify section 55 to accommodate this changed statutory scheme.

There are no comparable provisions of federal law related to this proposal.

LOCAL MANDATE

This proposal does not impose a mandate on local agencies or school districts.

FISCAL IMPACT ESTIMATES

This proposal does not impose costs on any local agency or school district for which reimbursement would be required pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code. This proposal does not impose other nondiscretionary cost or savings on local agencies. This proposal does not result in any cost or savings in federal funding to the state.

COSTS OR SAVINGS TO STATE AGENCIES

No additional costs or savings to state agencies are anticipated.

BUSINESS IMPACT/SMALL BUSINESSES

The OAL has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The proposal does not affect small businesses as defined by section 11342.610. The determination that the proposal would not affect small business is based upon the fact that the proposal applies only to the procedures followed by state agencies in the adoption of emergency regulations. It has no impact at all on any entity that is not a state agency as defined in section 11000 of the California Government Code.

ASSESSMENT REGARDING EFFECT ON JOBS/BUSINESSES

The OAL has determined that this regulatory proposal will not have any impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

COST IMPACTS ON REPRESENTATIVE PERSON OR BUSINESS

The OAL is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

EFFECT ON HOUSING COSTS: None

ALTERNATIVES

The OAL must determine that no reasonable alternative considered by the agency, or that has otherwise been identified and brought to the agency's attention, would be more effective in carrying out the purpose for which the adoption of this regulation is proposed, or would be as effective as and less burdensome to affected private persons than the proposed action.

CONTACT PERSONS

Inquiries concerning the proposed adoption of this regulation and written comments may be directed to:

Bill Gausewitz
Office of Administrative Law
300 Capitol Mall, Suite 1250
Sacramento, CA 95814
(916) 323-6221

or

Melvin Fong
Office of Administrative Law
300 Capitol Mall, Suite 1250
Sacramento, CA 95814
(916) 324-7952

INITIAL STATEMENT OF REASONS AND INFORMATION

The OAL has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based.

OAL Notice of Proposed Rulemaking
February 9, 2007
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TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained upon request from the Office of Administrative Law at 300 Capitol Mall, Suite 1250, Sacramento, CA 95814. These documents may also be viewed and downloaded from the OAL website at www.oal.ca.gov.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person named above.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named above.

WEBSITE ACCESS

Materials regarding this proposal can be found at www.oal.ca.gov.